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2001 JUN -4 P 4: 20

AZ CORP COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

JUN 04 2001

DOCKETED BY

William Mundell
Chairman

Jim Irvin
Commissioner

Marc Spitzer
Commissioner

IN THE MATTER OF THE APPLICATION
OF H2O, INC., FOR AN EXTENSION
OF ITS EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY

Docket No: W-02234A-00-0371

IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES, L.L.C. DBA
JOHNSON UTILITIES COMPANY FOR AN
EXTENSION FOR ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
PROVIDE WATER AND WASTEWATER
SERVICE TO THE PUBLIC IN THE
DESCRIBED AREA IN PINAL COUNTY,
ARIZONA

Docket No: WS-02987A-99-0583

Docket No: WS-02987A-00-0618

IN THE MATTER OF THE APPLICATION
OF DIVERSIFIED WATER UTILITIES, INC.
TO EXTEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY

Docket No: W-02859A-00-0774

IN THE MATTER OF THE APPLICATION
OF QUEEN CREEK WATER COMPANY
TO EXTEND ITS CERTIFICATE
OF CONVENIENCE AND NECESSITY

Docket No: W-01395A-00-0784

**JOHNSON UTILITIES' SURREPLY
REGARDING OPPOSITION TO
LATE-FILED EXHIBITS AND MOTION TO STRIKE**

1 Johnson Utilities, L.L.C. d/b/a Johnson Utilities Company ("Johnson Utilities")
2 submits this surreply to Diversified Water Utilities' ("Diversified") opposition to late-filed
3 exhibits and motion to strike.

4 Diversified in its reply argues that: "There was no agreement to accept late-filed
5 documents manufactured after the hearing closed." Reply, p.2, ll. 1-2. Diversified cites
6 ALJ Stern's closing remarks in Volume V of the transcript and one additional exchange
7 between Mr. Denby and Ms. Wolfe concerning late-filed exhibits in support of its
8 argument. Reply, p.3, ll. 4.¹

9 Contrary to Diversified's characterization of the exchange between Mr. Denby and
10 Ms. Wolfe cited by Diversified, Mr. Denby clearly states he does not know if a request for
11 service letter exists from Arizona Farms and asks if Ms. Wolfe needs one. Ms. Wolfe said
12 she would like to see that filed. There is no mention of when the request must be, or have
13 been, written. (Vol. II, p. 395, ll. 13-20, attached.) This exchange, moreover, took place
14 at the conclusion of the testimony of Byron Handy, developer of Parcel 1 in which
15 Arizona Farms is located. Mr. Handy testifies that he has not submitted a letter requesting
16 service but made the request verbally to Johnson Utilities, testified the same in this matter
17 in October 2000, and communicated his preference to Mark DeNunzio of the ACC staff.
18 (Vol. II, p. 388-389, attached). While it is clear from Mr. Handy's testimony that he has
19 requested service from Johnson Utilities, apparently no letter to this effect existed at the
20 time of the hearing. For Mr. Denby to comply with Ms. Wolfe's request for a letter,
21 therefore, Mr. Handy needed to prepare one after the hearing, at which time Johnson
22 Utilities filed it with the Commission.

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¹ Diversified did not provide the correct citation nor did it attach the correct page to the
reply.

1 In addition, Diversified did not cite all portions of the transcript that addressed late
2 filed exhibits. There are at least three additional transcript citations that provide a more
3 full and inclusive picture of the late-filed exhibit issue. In Vol. III, pp. 565-566 (attached),
4 when Ms. Wolfe cross-examines Mr. George Johnson about Parcel 8, Mr. Johnson clearly
5 states that he does not know whether Johnson Utilities has received written requests for
6 service for Parcel 8. Ms. Wolfe then asks if he can provide the requests as an exhibit and
7 Mr. Johnson agrees. Once again, the issue of when the letters were or will be written is
8 not mentioned and Johnson Utilities accepted this exchange to mean the Commission
9 wanted the request for service letters for Parcel 8 to be filed regardless.


10 This interpretation is further supported in the direct examination of Mr. DeNunzio
11 by Ms. Wolfe. In discussing staff recommendations, Mr. DeNunzio states that "...Parcel 8
12 will be subject to Johnson Utilities submitting letters of request, as was testified a few days
13 ago, for that parcel." (Vol. V, p. 867, ll. 1-3, attached.)

14 Mr. DeNunzio's cross-examination by Mr. Campbell reiterates the status of the
15 request for service for Parcel 1. Mr. Campbell clearly asks Mr. DeNunzio: "...did you
16 hear Mr. Handy testify that he requested service and was going to confirm that in a letter
17 as a late-filed exhibit?" Mr. DeNunzio's reply is an unequivocal "Yes." (Vol. V, p. 882,
18 ll. 22-25, attached.)

19 Johnson Utilities took note of all of these references to letters of request and late-
20 filed exhibits over the course of the five day hearing, compiled the letters, and submitted
21 them to the Commission. Johnson Utilities assumes ALJ Stern will give them whatever
22 weight he deems appropriate.

1 RESPECTFULLY submitted this 4th day of June, 2001.

2 LEWIS AND ROCA LLP

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4 

5 Thomas H. Campbell

6 Michael Denby

7 40 N. Central Avenue

8 Phoenix, Arizona 85004

9 (602) 262-5723

10 Attorneys for Johnson Utilities LLC

11 ORIGINAL and ten (10) copies
12 of the foregoing filed this 4th day
13 of June, 2001, with:

14 The Arizona Corporation Commission
15 Docket Control – Utilities Division
16 1200 W. Washington Street
17 Phoenix, Arizona 85007

18 COPY of the foregoing hand-
19 delivered this 4th day of June,
20 2001, to:

21 Administrative Law Judge Marc Stern
22 Arizona Corporation Commission
23 1200 W. Washington Street
24 Phoenix, Arizona 85007

25 Teena Wolfe, Legal Division
26 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Mark Di Nunzio, Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

1 COPY of the foregoing mailed this
2 4th day of June, 2001, to:

3 Jay Shapiro
4 Karen E. Errant
5 Fennemore Craig
6 3003 N. Central Avenue, Suite 2600
7 Phoenix, Arizona 85012-2913

8 Charles A. Bischoff
9 Jorden & Bischoff
10 4201 N. 24th Street, Suite 300
11 Phoenix, Arizona 85016

12 William Sullivan
13 Martinez & Curtis, P.C.
14 2712 N. 7th Street
15 Phoenix, Arizona 85008-1090

16 Petra Schadeberg
17 Pantano Development Ltd. Partnership
18 3408 N. 60th Street
19 Phoenix, Arizona 85018-6702

20 Richard N. Morrison
21 Salmon, Lewis & Weldon
22 4444 N. 32nd Street, Suite 200
23 Phoenix, Arizona 85018

24 Kathy Aleman, Manager
25 Wolfcor, LLC & Wolfkin Farms
26 Southwest Properties, Inc.
3850 E. Baseline Road, Suite 123
Mesa, Arizona 850206

Dick Maes, Project Manager
Vistoso Partners, LLC
1121 W. Warner Road, Suite 109
Tempe, Arizona 85284



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At: Phoenix, Arizona

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Date: March 16, 2001

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Filed: APR - 6 2001

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

15

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VOLUME II
(Pages 196 through 398).

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ARIZONA REPORTING SERVICE, INC.

21

Court Reporting

22

Suite Three

2627 North Third Street

Phoenix, Arizona 85004-1103

23

By: CECELIA BROOKMAN, RPR

24

Prepared for:

CCR No. 50154

25

ACC

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1 it true that most builders do not want to enter into
2 negotiations with parcels like Arizona Farms if it
3 does not even have water or sewer available?

4 A. That's true.

5 Q. So it's important to you to have water and
6 sewer available first before you can begin to continue
7 to market this property?

8 A. Yes, sir.

9 MR. DENBY: And not really a redirect
10 question, more to Staff, if you want the formal
11 request that Johnson has, apparently we have a stack
12 of formal requests that Johnson has been asked to
13 serve, we'd be glad to provide you with those. I
14 don't know if there's one from Arizona Farms or not.

15 MS. WOLFE: We don't believe there is, it may
16 be that we have them.

17 MR. DENBY: Do you need them or no?

18 MS. WOLFE: We would like to see that filed
19 as a late-filed exhibit or later on in the proceeding,
20 yes.

21 ALJ STERN: Anything else?

22 MR. DENBY: I have no further questions.

23 ALJ STERN: Thank you, sir, you're excused.

24 (The witness was excused.)

25 MR. SHAPIRO: We didn't have any redirect,

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At: Phoenix, Arizona

Date: March 16, 2001

Filed: APR - 6 2001

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME II
(Pages 196 through 398)

ARIZONA REPORTING SERVICE, INC.
Court Reporting
Suite Three
2627 North Third Street
Phoenix, Arizona 85004-1103

By: CECELIA BROOKMAN, RPR
Prepared for: CCR No. 50154

ACC

ORIGINAL

1 A. No, all of Arizona Farms, four and a half
2 sections.

3 Q. What is being developed in the middle of the
4 two pieces of Parcel 1?

5 A. It's all part of the -- I don't think there's
6 anything being developed there right now. There's not
7 anything being developed there right now. It's all
8 part of one contiguous master plan.

9 Q. Have you spoken with -- I assume you've
10 spoken with Johnson Utilities regarding getting
11 service to Parcel 1?

12 A. Yes.

13 Q. When did you first approach them?

14 A. We have spoken about it over, I don't know,
15 over the last year or so there's been conversations
16 about serving Arizona Farms, and actually it was
17 mentioned in the master plan that Johnson Utilities
18 would be a provider of the water and sewer provider
19 for Arizona Farms.

20 Q. Have you made a formal request for service, a
21 formal written request, excuse me?

22 A. Just in the testimony, I believe that I had,
23 back in October, when I was here for a hearing, I had
24 given Mark a map of Arizona Farms and told him that I
25 believe that there may have been an oversight, that we

1 did in fact want to be included in a certificated
2 water area.

3 Q. You're talking about Mark DiNunzio of Staff?

4 A. Yes.

5 Q. Do you have a copy of that?

6 A. Yes.

7 Q. Would you be willing to have it put in the
8 record?

9 A. Sure.

10 Q. It's simply a map?

11 A. Yes.

12 Q. It has no request for service?

13 A. No.

14 Q. Have you spoken with Johnson Utilities about
15 building off-site facilities to serve Parcel 1?

16 A. Not the specific details about his system.

17 Actually, it kind of surprised me in October that all

18 of Arizona Farms was left out of the certificated

19 area, since it was mentioned in the PAD, that the

20 entire development will be served by Johnson

21 Utilities. I had been, I guess, running on that

22 assumption, that water and sewer were taken care of

23 for Arizona Farms.

24 Q. By whom?

25 A. From the planned area development that was

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At: Phoenix, Arizona

Date: March 19, 2001

Filed: APR - 6 2001

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME III
(Pages 399 through 581)

ARIZONA REPORTING SERVICE, INC.
Court Reporting
Suite Three
2627 North Third Street
Phoenix, Arizona 85004-1103

By: CECELIA BROOKMAN, RPR
CCR No. 50154

Prepared for:

ACC

ORIGINAL

1 Cooper Road runs north and south along the
2 western boundary of Parcel 8?

3 A. Yes.

4 Q. And then across the northern boundary of
5 Parcel 8, is there a road there?

6 A. Yes. I don't know the name of it.

7 Q. What I'm trying to determine is in which of
8 these quadrants on Exhibit J-9 -- if you look up in
9 the upper right-hand corner, it shows a section
10 divided into four quadrants -- in which of these
11 quadrants are people requesting service?

12 A. I would say northeast, southeast and
13 southwest, and we could have something in the
14 northwest portion, I'm not sure. But in northeast,
15 southeast, and southwest, we have requests for
16 service.

17 Q. And how many do you have in the northeast
18 quadrant?

19 A. I'm not sure, ma'am.

20 Q. More than two?

21 A. Oh, yes.

22 Q. And whereabouts are they located in that
23 quadrant?

24 A. I can't tell you. I think it takes up the
25 major portion of it.

1 Q. And do you have a written request for
2 service?

3 A. We should have. I don't know whether we do
4 or not.

5 Q. Would you be willing to provide that --

6 A. Very much so.

7 Q. -- as an exhibit in this proceeding?

8 A. Yes.

9 Q. Now, in your conversation with Mr. Sullivan,
10 I believe it was Mr. Sullivan, I don't want to
11 attribute this to him, but you were talking about the
12 CAP canal crossing about your lines?

13 A. Yes, ma'am.

14 Q. And the fact that there is a water line that
15 does go underneath the CAP canal in the Sun Valley
16 Farms section?

17 A. Yes, ma'am.

18 Q. Are you aware that your master plan requires
19 two more crossings at least at the CAP canal?

20 A. No, but if it does, it does.

21 Q. And possibly three?

22 A. We work with them, we've had crossings, we
23 have three or four crossings all together with them
24 now. We have crossings with the railroad. That's no
25 big deal.

1 At: Phoenix, Arizona

2 Date: March 21, 2001

3 Filed: APR - 6 2001

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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VOLUME V

(Pages 817 through 936)

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Court Reporting

21

Suite Three

2627 North Third Street

22

Phoenix, Arizona 85004-1103

23

By: CAROLYN T. SULLIVAN, RPR

Prepared for:

CCR No. 50528

24

25 ACC

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ARIZONA REPORTING SERVICE, INC.
Realtime Specialists

(602) 274-9944
Phoenix, AZ

1 In addition, parcel 8 will be subject to
2 Johnson Utilities submitting letters of request, as
3 was testified a few days ago, for that parcel.

4 Q. And all of these parcel recommendations that
5 you're making are conditioned upon the Staff
6 conditions that you've referred to earlier here on
7 Staff being allowed to make a determination of whether
8 development has occurred in two years?

9 A. Correct.

10 Q. And the other recommendation in the Staff
11 Report that the utilities should be required to show
12 DEQ compliance for two years and to remedy any notices
13 of violation within 30 days?

14 A. Yes, that's correct.

15 That brings us to the next issue, parcels 16,
16 17, and 18. I believe the Home Place and Ware Farms.
17 Staff still supports the inclusion of those parcels to
18 H₂O and does not change its recommendation.

19 That brings us to parcel 1, which is right
20 down here. Staff's original Staff Report recommended
21 denial of this parcel of property. Due to the
22 proposed development in 2006, in Staff's second Staff
23 Report, parcel 1 was again denied because the
24 Commission never received any request for service for
25 that parcel. Johnson's witness, Mr. Handy, in his

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1 At: Phoenix, Arizona

2 Date: March 21, 2001

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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VOLUME V
(Pages 817 through 936)

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ARIZONA REPORTING SERVICE, INC.

21

Court Reporting

Suite Three

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2627 North Third Street

Phoenix, Arizona 85004-1103

23

By: CAROLYN T. SULLIVAN, RPR

Prepared for:

CCR No. 50528

24

25

ACC

ORIGINAL

1 time; is that correct?

2 A. That's correct.

3 Q. And the reason for that was you just felt
4 that development was somehow too speculative or too
5 far off in the future; is that correct?

6 A. Well, the development in that parcel it
7 appears to Staff is still uncertain as the date has
8 changed since our original Staff Report to being one
9 of immediate need to one being testified that it was
10 at least three years out. And the sole purpose of
11 getting it requested into a CC&N at this point in time
12 was for making that property more marketable.

13 Q. Now, you heard the testimony from Mr. Johnson
14 that the southern part of parcel 1 is actually being
15 developed by Mr. Lee Smith. Do you remember that
16 testimony?

17 A. Vaguely.

18 Q. Did you take that into account in your
19 recommendation or decision not to change your
20 recommendation?

21 A. No, I didn't.

22 Q. And you did hear Mr. Handy testify that he
23 requested service and was going to confirm that in a
24 letter as a late-filed exhibit?

25 A. Yes.

1 At: Phoenix, Arizona

2 Date: March 21, 2001

3 Filed: APR - 6 2001

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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VOLUME V

(Pages 817 through 936)

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21

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22

Phoenix, Arizona 85004-1103

23

By: CAROLYN T. SULLIVAN, RPR

Prepared for:

CCR No. 50528

24

25 ACC

ORIGINAL

ARIZONA REPORTING SERVICE, INC.
Realtime Specialists

(602) 274-9944
Phoenix, AZ

1 Staff maintains the position that it has held
2 since it first became aware of the movement to form a
3 district. And that is that until a utility's assets
4 are obtained, the existence of a district should have
5 no bearing on a Commission decision in this matter.
6 Again, I reiterate that the timing of any district
7 acquisition of utility assets is not known. And
8 because it may not occur, the Commission should
9 proceed as if the district has no effect on this
10 proceeding.

11 Thank you.

12 ALJ STERN: Thank you.

13 That concludes this proceeding. I'll take
14 the matter under advisement. S-3 is going to be filed
15 probably this week or beginning of next week?

16 MS. WOLFE: By Tuesday?

17 ALJ STERN: That would be fine. And then the
18 document relating to legal descriptions of the various
19 parcels. And I think that's about it.

20 Anything else?

21 MR. SHAPIRO: No, Your Honor. Thank you.

22 MR. CAMPBELL: No.

23 ALJ STERN: Thank you. That concludes this
24 hearing.

25 (The hearing concluded at 3:45 p.m.)